

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

KONINEDOU FONTA WALKER

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:12CV301-HSO-RHW

FFVA MUTUAL INSURANCE COMPANY et al

DEFENDANTS

PROPOSED FINDINGS OF FACT AND RECOMMENDATION

Before the Court is Plaintiff Koninedou Fonta Walker's [44] Motion for Default Judgment as to Defendant Bradley Sanders. Plaintiff filed the motion on August 19, 2013. In their memoranda, Walker and Sanders both acknowledge that Sanders was not properly served until July 23 or 24, 2013. On August 6, 2013, Sanders filed a [39] Motion to Dismiss. Walker did not file the instant motion for default until August 19, 2013—nearly two weeks after Sanders had responded to the complaint by filing a motion to dismiss.

Pursuant to Fed. R. Civ. P. 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend. . . the clerk must enter the party's default." Sanders filed a motion to dismiss well within the 21 days allowed to respond to Plaintiff's complaint. *See* Fed. R. Civ. P. 12(a)(1)(A)(I). Accordingly, Plaintiff's motion for default is without merit.

RECOMMENDATION

The undersigned recommends that Plaintiff's [44] Motion for Entry of Default be DENIED.

NOTICE OF RIGHT TO APPEAL/OBJECT

Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must

serve and file written objections within fourteen (14) days after being served with a copy unless the time period is modified by the District Court. A party filing objections must specifically identify those findings, conclusions and recommendations to which objections are being made; the District Court need not consider frivolous, conclusive or general objections. Such party shall file the objections with the Clerk of the Court and serve the objections on the District Judge and on all other parties. A party's failure to file such objections to the proposed findings, conclusions and recommendation contained in this report shall bar that party from a de novo determination by the District Court. Additionally, a party's failure to file written objections to the proposed findings, conclusions, and recommendation contained in this report within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the proposed **factual findings and legal conclusions** that have been accepted by the district court and for which there is no written objection. *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

SO ORDERED, this the 6th day of November, 2013.

/s/ Robert H. Walker
ROBERT H. WALKER
UNITED STATES MAGISTRATE JUDGE